RESOLUTION

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF EL PASO:

THAT the Mayor be authorized to sign the ORION COMMUNICATIONS SOFTWARE AGREEMENT and SOFTWARE MAINTENANCE AGREEMENT entered into by and between the City of El Paso and Orion Communications, Inc., for the CourtNotify computer program system. The license fee shall be ONE HUNDRED AND SIXTY SIX THOUSAND AND FIVE HUNDRED AND 00/100 DOLLARS ($166,500.00). The maintenance fee shall be SIXTEEN THOUSAND SIX HUNDRED AND FIFTY AND 00/100 DOLLARS ($16,650.00).
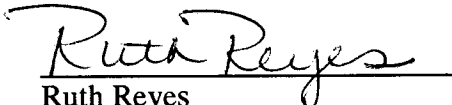
ADOPTED this 6th of July 2004.

THE CITY OF EL PASO

_____
Joe Wardy
Mayor

ATTEST:

_____
Richarda Duffy Momsen
City Clerk

APPROVED AS TO FORM:

_____
Ruth Reyes
Assistant City Attorney

ORION COMMUNICATIONS SOFTWARE LICENSE AGREEMENT

This ORION COMMUNICATIONS SOFTWARE LICENSE AGREEMENT ("**Agreement**") is entered into between ORION COMMUNICATIONS, INC., a Texas corporation ("**Licensor**") and the CITY of EL PASO, TEXAS ("**Customer**").

1. Definitions

"**Software**" means the computer program in object code, source code and the user manuals described in the specifications set forth in Exhibit A. The term "Software" includes any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to such computer program and user manuals; and,

"**Certificate of Installation**" means a written notice, signed by Licensor, certifying that the Software has been installed on Customer's server and that the Software substantially complies with the specifications set forth in Exhibit A.

"**Customer Site**" means the office space occupied by Customer's server in the City of El Paso, Texas, located at 911 N. Raynor, El Paso, TX 79903 or such other locations as shall be pre-approved in writing by Licensor.

2. License

(a) **Grant of License.** Licensor grants Customer, pursuant to the terms and conditions of this Agreement, a perpetual, nonexclusive, nontransferable license to use the Software;

(b) **Authorized Equipment and Site.** Customer shall maintain the Software only on Customer's server at Customer's Customer Site and use the Software only on the following computer equipment ("**Authorized Equipment**"):

Authorized Equipment (Manufacturer, Model and CPU):

Microsoft Server Windows or Red Hat 7.0
Microsoft SQL 7.0
ColdFusion MX Professional

(c) **Restrictions on Use.** Except as otherwise provided in this Agreement, Customer shall use the Software only for the conduct of Customer's official business and operations by Customer's elected officials and employees, and Customer shall not:

(i) Process or permit to be processed the data of any other party;

(ii) Use the Software in the operation of a service bureau;

(iii)   Allow access to the Software through any terminals located outside Customer's covered area; or,

(iv)   Copy the Software.

(d)   **Copies.** Customer, solely to enable use of the Software as contemplated by this Agreement, may make two (2) archival copy of the Software's computer program, provided that the copy shall include Licensor's copyright and any other proprietary notices. The Software delivered by Licensor to Customer and the archival copy shall be stored at Customer's Customer Site. Customer shall have no other right to copy, in whole or in part, the Software. Any copy of the Software made by Customer is the exclusive property of Licensor;

(e)   **Modifications, Reverse Engineering.** Modifications to the Software made by the Customer or their agent are discouraged. Any modifications made by the Customer or their agent are the sole responsibility of the Customer. Customer shall not disassemble, decompile or reverse engineer the Software;

(f)   **Municipality Use.** Customer may permit access to the Software through web-based interface with Customer's server by the El Paso County municipalities of El Paso, Culbersome, Hudspeth, Sierra Blanca, Anthony, Horizon and Socorro (collectively, "**Municipalities**"), for conduct of their official business and operations by their elected officials and employees and for no other purpose whatsoever. Customer may also permit same said access to El Paso County government agencies at remote sites that are not within any of the listed municipalities;

(g)   **Material Terms and Conditions.** Customer specifically agrees that each of the terms and conditions of this Section 2 are material and that failure of Customer or the Municipalities, as applicable, to comply with these terms and conditions shall constitute sufficient cause for Licensor to terminate this Agreement. The presence of this Subsection 2(g) shall not be relevant in determining the materiality of any other provision or breach of this Agreement by either party;

(h)   **Intent of License.** The licensing_agreement is not intended to limit government usage of the courtNotify system but is intended to restrict transfer to private, non-government entities. It is acknowledged that this license is for an unlimited number of sites within the County of El Paso for use by local area government and/or law enforcement agencies to be overseen by City and/or County IT Departments.

3.   **Delivery, Installation, Data Conversion, Testing and Acceptance**

(a)   **Delivery.** Licensor shall deliver the Software to Customer's Customer Site within twenty (20) days of the effective date of this Agreement;

(b)   **Installation.** Within thirty (30) days after the effective date of this Agreement, Customer shall:

(i)   Provide at Customer's Customer Site the computer equipment and all required peripherals identified in Section 2(b) and Exhibit A to this Agreement; and,

(ii)   Obtain and install on such computer equipment all required third-party software identified in Section 2(b) and Exhibit A to this Agreement. Such computer equipment, peripherals and third-party software shall be installed and fully operational before Licensor begins installation of the Software. Following delivery of the Software to Customer's Customer Site, Licensor shall install the Software within the next ten (10) days. Any installation time incurred by Licensor as a result of Customer's delay or failure to comply with the requirements this Agreement shall be charged to Customer at Licensor's then-current hourly rates, as of 02/10/2004 the rate is $85.00 per hour. Customer shall grant Licensor full and continuing access to Customer's Customer Site and Customer's computer system for the period of time required for the Software installation and shall give Licensor reasonable priority use of such computer system during installation. Upon completion of the Software installation, Licensor shall deliver to Customer a Certificate of Installation; and,

(c)   **Data Conversion.**
Interface with JIMs

- El Paso County IT department will provide to Orion an automated method to extract the following data from the JIMs system. This extraction will occur every morning at 3:00 am. This time may be adjusted by mutual agreement with the intent to ensure efficient deployment of the system. The resulting extraction will result in a flat delimitated file structure that will allow Orion to compare the previous extraction file with the current extraction file to create a changes only file.
- Cause Number
- DIM's Number
- EPPD Case Number
- Defendant Name
- Arrest Number
- Charge
- Case Type
- Court Name

- Orion will use this information to update the CNS system by matching existing DIM's numbers and/or EPPD Case numbers loaded within the CNS system to the information retrieved from JIMS. Orion will then populate the following fields using the newly imported JIMS data:
- Cause Number
- Defendant Name

- Arrest Number
- Charge
- Case Type
- Court Name

- Based on the Court Name, the CNS system will post to the Cause responsibility quadrant of the associated DA team members (Prosecutors, Investigators, Clerks) the following information:
- Cause Number
- Defendant's Name
- Word – "New" indicating a newly assigned Cause Number

Interface with PeopleSoft
- The El Paso City HR system will create a flat delaminated file containing the following fields:

- social security number
- Badge number
- last name
- first name
- middle name
- employee number
- rank
- organization
- email
- date of termination
- supervisor
- issupervisor   (this is a yes no are they a supervisor or not)

The delimitated format structure is as follows:

ssn, badge, lname, fname, mname, empl, textrank, org, watch, daysoff, standbyphone1, standbyphone2, email, dot, supervisor, issupervisor

watch,daysoff,standbyphone1,standbyphone2, and supervisor can all be blanks since they are not critical for us to upload a new user. In the event watch and days off information is not provided to the CNS upload, CNS will not be able to incorporate this information into the court date scheduling system of CNS.

- Ongoing updates from PeopleSoft
- CNS is designed to allow updates of user data on a regular basis. Control of these updates are restricted to Master Administrators. It is recommended to maintain current information regarding user's

employment status, organization, watch, and days off details that the update be completed on a consistent schedule as defined by the El Paso Police Department.

- Interface to other HR systems to support County Employees and other agencies

- Other Agencies desiring to be added to the CNS system will have the option to upload the data in an electronic format as defined below, or manually enter user information. If an electronic upload is desired, then the agency will provide to the CNS Master admin a flat delaminated file containing the following fields:

- social security number
- Badge number
- last name
- first name
- middle name
- employee number
- rank
- organization
- email
- date of termination
- supervisor
- issupervisor   (this is a yes no are they a supervisor or not)

The delimitated format structure is as follows:

ssn, badge, lname, fname, mname, empl, textrank, org, watch, daysoff, standbyphone1, standbyphone2, email, dot, supervisor, issupervisor

watch,daysoff,standbyphone1,standbyphone2, and supervisor can all be blanks since they are not critical for us to upload a new user. In the event watch and days off information is not provided to the CNS upload, CNS will not be able to incorporate this information into the court date scheduling system of CNS.

- Ongoing updates from the Agency's system
    - o CNS is designed to allow updates of user data on a regular basis. Control of these updates are restricted to Master Administrators. It is recommended to maintain current information regarding user's employment status, organization, watch, and days off details that the update be completed on a consistent schedule as defined by the El Paso Police Department.

(d)   **Testing.** Customer shall have thirty (30) days, commencing upon delivery of the Certificate of Installation, to test the Software for substantial compliance with the specifications set forth in <u>Exhibit A</u> ("**Testing Period**"). During the Testing Period, Customer shall immediately provide notice to Licensor of any failure of the Software to substantially comply with such specifications. Upon receipt of such notice, Licensor shall use its best efforts to determine the nature of and remedy the failure and install a fix within a reasonable time period. If such notice is provided by Customer to Licensor, the Testing Period shall be extended through the thirtieth (30th) day after Licensor's last receipt of notice of a failure of the Software or ninety (90) days after the delivery of the Certificate of Installation, whichever first occurs;

(e)   **Acceptance.** Acceptance shall occur:

(i)   Upon Customer's delivery of notice to Licensor that the Software substantially complies with the specifications set forth in <u>Exhibit A</u>; or,

(ii)   If Customer does not provide notice of a failure of the Software within thirty (30) days of the close of the Testing Period, then upon the close of the Testing Period.

4.   License Fee

(a)   **In General.** In consideration for the license granted by Licensor under this Agreement, Customer shall pay Licensor a fee as set forth in <u>Exhibit B</u> ("**License Fee**").

(b)   **Payment Terms.** Each installment of the License Fee shall be due and payable in accordance with the Payment Schedule set forth in <u>Exhibit B</u>. All amounts not paid within ten (10) days of the due date shall bear interest at the rate of ten percent (10%) per annum, or at the highest rate allowed by law, whichever is less, from the date due until paid. The due date shall be no sooner than 30 days from the date Customer receives the invoice in accordance with this agreement. Failure of Customer to pay any amounts when due shall constitute sufficient cause for Licensor to terminate this Agreement;

(c)   **Taxes, if any.** Customer shall, in addition to the other amounts payable under this Agreement, pay all sales, use, value added or other taxes, federal, state or otherwise, however designated, which are levied or imposed by reason of the transactions contemplated by this Agreement.

5.   Ownership

(a)   **Title**. Customer and Licensor agree that Licensor owns all proprietary rights, including patent, copyright, trade secret, trademark and other proprietary rights, in and to the Software and any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to the Software, whether made by Licensor or any third party; and,

(b)   **Transfers**. Customer will be provided source code for the Software; source code is included in definition of Software. Under no circumstances whatsoever shall Customer sell, license, publish, display, distribute, or otherwise transfer to a third party, including, without limitation thereby, the Municipalities, the Software or any copy thereof, in whole or in part, without Licensor's prior express written consent.

6.   Confidential Information

Customer agrees that the Software is proprietary to Licensor and contains proprietary information, including trade secrets, know-how and confidential information, that is the exclusive proprietary property of Licensor. During the period this Agreement is in effect and at all times after termination of this Agreement , Customer and Customer's elected officials, employees and agents shall, to the extent allowed by law maintain the confidentiality of the Software and shall not sell, license, copy, publish, display, distribute, disclose or otherwise make available the Software to any third party, including, without limitation thereby, the Municipalities, nor use, or allow use of, the Software except as expressly authorized by this Agreement. Except as expressly contemplated in this Agreement, Customer shall to the extent allowed by law not disclose to, or permit to be disclosed to any third party, including, without limitation thereby, the Municipalities, any information concerning the Software, including any flow charts, logic diagrams, user manuals and screens, to persons not an elected official or employee of Customer or the Municipalities without the prior express written consent of Licensor. In no event whatsoever shall Customer permit any disclosure of, access to, or use of, the Software source code by any party, including Customer, for any purpose except as expressly approved in writing in advance by Licensor, such approval to be at the sole option and discretion of Licensor.

7.   Use and Training

Customer shall limit the use of the Software to elected officials and employees of Customer and the Municipalities who have been appropriately trained. Licensor shall provide, at a mutually convenient time, one (1) five (5) day training program at no charge at Customer's Customer Site for up to twenty-five (25) employees of Customer.

During on-site (El Paso County) training, Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF CONTRACTORS ACTIONS OR

FAILURES TO ACT RELATED TO THIS AGREEMENT. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Contractor every demand, notice, summons or other process received by the City in any claim or legal proceeding contemplated herein. Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Contractor will pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor's property from any cause. [Revised 04-15-99]

8. Warranty

(a) **Scope of Warranty.** Licensor warrants to Customer that for a period of one (1) year commencing upon Acceptance the Software will substantially comply with the specifications set forth in <u>Exhibit A</u>. During this warranty period, Licensor shall also provide Customer the support and maintenance services set forth in the Maintenance Agreement appended hereto as <u>Exhibit C</u>. After expiration of the warranty period, Licensor shall provide support and maintenance for the Software pursuant to the terms of the Maintenance Agreement; and,

9. No Consequential Damages

Licensor shall not be liable to Customer or the Municipalities for indirect, special, incidental, exemplary or consequential damages (including, without limitation, lost profits) related to this Agreement or resulting from use or inability to use the Software, arising from any cause of action whatsoever, including contract, warranty, strict liability, or negligence, even if Licensor has been notified of the possibility of such damages. The exception to this item would be if the damage is caused through fault of the Licensor or their agent, they would in that instance be liable for making the system operable.

10. Indemnification

Licensor shall indemnify and hold harmless Customer from and against any claims, including reasonable legal fees and expenses, based upon infringement of any United States copyright or patent by the Software. Customer agrees to notify Licensor of any such claim promptly in writing and to allow Licensor to control the proceedings. Customer agrees to

cooperate fully with Licensor during such proceedings. Licensor shall defend and settle at Licensor's sole expense all proceedings arising out of the foregoing. In the event of such infringement, Licensor may replace, in whole or in part, the Software with a substantially compatible and functionally equivalent computer program or modify the Software to avoid the infringement.

11. Term and Termination

(a) **Effective Date**. This Agreement and the license granted hereunder shall take effect upon the date that the last party executes this Agreement;

(b) **Termination**. Each party shall have the right to terminate this Agreement and the license granted herein upon the occurrence the following events ("**Event of Default**"):

    (i)   In the event the other party violates any provision of this Agreement; or,

    (ii)   In the event the other party:

        (A)   Terminates or suspends such party's business;

        (B)   Becomes subject to any bankruptcy or insolvency proceeding under federal or state statute;

        (C)   Becomes insolvent or subject to direct control by a trustee, receiver or similar authority; or,

        (D)   Has wound up or liquidated, voluntarily or otherwise;

        (E)   The City of El Paso may terminate this contract, in whole or in part, at any time by written notice to the Contractor. The Contractor will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to the City of El Paso to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of El Paso, the Contractor will account for the same, and dispose of it in the manner the City of El Paso directs. If the Contractor fails to comply with any provision of the contract the City of El Paso may terminate this contract for default. Termination shall be effected by serving a notice of intent to terminate the contract setting forth the manner in which the Contractor is in default. The contractor will be given an opportunity to

correct the problem within a reasonable time before termination notice is rendered. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

(c)   **Notice and Opportunity to Cure.** Upon the occurrence of an Event of Default, the nondefaulting party shall deliver to the defaulting party a Notice of Intent to Terminate that identifies in detail the Event of Default. If the Event of Default remains uncured for thirty (30) days, the nondefaulting party may terminate this Agreement and the license granted herein by delivering to the defaulting party a Notice of Termination that identifies the effective date of the termination, which date shall not be less than thirty (30) days after the date of delivery of the Notice of Intent to Terminate; and,

(d)   **Procedure.** Within thirty (30) days after termination of the license, Customer shall return to Licensor, at Customer's expense, the Software and all copies thereof, delete or destroy all other copies of the Software, and deliver to Licensor a certification, in writing signed by an officer of Customer, that the Software has been returned, all copies deleted or destroyed, and all use discontinued. Aside from termination under this section, in the event that Licensor for any other reason ceases to provide support for the Software, Customer shall maintain rights to Software.

12.   Assignment

Customer or Licensor shall not assign or otherwise transfer the Software or this Agreement to anyone, including any subdivision, parent, subsidiaries, affiliated entities or third parties, or as part of the sale of any portion of Customer's business, or pursuant to any merger, consolidation or reorganization, without Licensor's prior express written consent.

13.   Force Majeure

Neither party shall be in default or otherwise liable for any delay in or failure of such party's performance under this Agreement if such delay or failure arises by any reason beyond such party's reasonable control, including any act of God, any acts of the common enemy, the elements, earthquakes, floods, fires, epidemics, riots, failures or delay in transportation or communications, or any act or failure to act by the other party or such other party's employees, agents or contractors; provided, however, that lack of funds shall not be deemed to be a reason beyond a party's reasonable control. The parties will promptly inform and consult with each other as to any of the above causes which in their judgment may or could be the cause of a delay in the performance of this Agreement.

14.   Mediation

The parties agree to submit disputes between them to non-binding mediation prior to seeking relief through formal legal action. Both parties shall agree to the mediator.

15. Notices

All notices under this Agreement are to be delivered by

       (a)   Depositing the notice in the mail, using registered mail or certified mail, return receipt requested, addressed to the address below or to any other address as the party may designate by providing notice;

       (b)   Faxing the notice by using the facsimile number set forth below or any other number as the party may designate by providing notice;

       (c)   Overnight delivery service addressed to the address below or to any other address as the party may designate by providing notice; or,

       (d)   Hand delivery to the individual designated below or to any other individual as the party may designate by providing notice.

       (e)   Notice shall be deemed delivered:

           (i)   If by registered or certified mail, return receipt requested, four (4) days after the notice's deposit in the United States mail, postage prepaid;

           (ii)   If by facsimile, on the date the notice is delivered;

           (iii)   If by overnight delivery service, on the day of delivery; or

           (iv)   If by hand delivery, on the date of hand delivery.

LICENSOR:

       Orion Communications, Inc.
       7142 Shook Avenue
       Dallas, Texas 75214
       Attention: Leslie DeLatte, President
       Telephone: 214.324.9433
       Facsimile: 214.324.1049

CUSTOMER:

       Mayor
       2 Civic Center Plaza

El Paso, TX 79901

Attention:_____

Telephone: 915-541-4145_____

Facsimile: 915-541-4501_____

16.   Municipalities. Prior to permitting access by any of the Municipalities to the Software through the web-based interface with Customer's server, and as an express condition precedent, Customer shall obtain the express prior written consent and agreement of each such Municipality that the limitations and restrictions of this Agreement applicable to Customer shall be equally applicable to each such Municipality, and provide an original copy thereof to Licensor.

17.   General Provisions.

      (a)   Complete Agreement. The parties agree that this Agreement is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral or written, between the parties relating to this Agreement;

      (b)   Amendment. This Agreement may not be modified, altered or amended except by written instrument duly executed by both parties;

      (c)   Waiver. The waiver or failure of either party to exercise in any respect any right provided for in this Agreement shall not be deemed a waiver of any further right under this Agreement;

      (d)   Severability. If any provision of this Agreement is invalid, illegal or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Agreement shall be valid and enforceable to the maximum extent possible;

      (e)   Governing Law. This Agreement and performance hereunder shall be governed by the laws of the State of Texas, without reference to its choice of law principles; and,

      (f)   Read and Understood. Each party acknowledges that such party has read and understands this Agreement and agrees to be bound by the terms of this Agreement.

AGREED:

LICENSOR:

Orion Communications, Inc.,
a Texas corporation

By: *[signature]*

Leslie DeLatte
President

Address:

7142 Shook Avenue
Dallas, Texas 75214

Date: *2/13/04*

Passed and Approved this 6th day of July, 2004.

CUSTOMER:

_____City of El Paso_____

By:_____
Name: Joe Wardy_____
Title: Mayor_____

Address:

2 Civic Center Plaza_____
El Paso, TX 79901_____

_____

Date:_____

ATTEST:

_____
Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:

[signature]
_____
Ruth Reyes
Assistant City Attorney

APPROVED AS TO CONTENT:

[signature]
_____
Chief Richard Wiles
El Paso Police Department

[signature]
_____
Tony Montoya, Director
Information Technology

EXHIBIT A TO
ORION COMMUNICATIONS SOFTWARE LICENSE AGREEMENT

Specifications

1. **Software**

   (a) **Computer Program**

Manage Your Users	CourtNotify User Module
Automated Upload from HR or Personnel Systems	Unlimited User License
User Permissions Based on Roles - Police	• Officer • Police Supervisor • Police Administrator • Court Administrator • Agency Administrator • Master Administrator
User Permissions Based on Roles – District Attorney	• Prosecutor • Investigator • Clerk
Field View, Edit, Delete Restrictions based on User Roles	Yes
Export Daily Notification Logs	Yes
Chain of Command Selection	Yes
Online Chain of Command Organization Chart	Yes
Automated Notification of Chain of Command Change	Yes
Exception Reports for Chain of Command Issues	Yes
Automated Importing of New Officers	Yes
Organization Management by Org Code	Yes
Termination Management and Re-Instatement	Yes
Emergency Contact Information	Yes
Ability to match Network User and Password to CNS Access	Yes
Leave Management	**CourtNotify Leave Module**
Submittal of Leave Requests Online	Yes

Online Approval / Disapproval to Immediate Supervisor	Yes
Leave Category Collection	Yes
Edit, Delete, View Right for Leave Requests	Yes
Timestamp and User Stamped Leave Notes	Yes
Approver / Disapprover Name Stamp	Yes
Homepage Notification of New Leave Request	Yes
Leave Request History	Yes
Integrated Leave Request with Docket Request Conflicts	Yes
Docket Creation	**CourtNotify Docket Module**
Ability to Allow Police to Create Dockets	Yes
Ability to Allow District Attorney to Create Dockets	Yes
Automated Default Field Fill-Ins for Default Courts	Yes
Docket History	• Date Changes • Ownership Changes
Court Calendar Setting Integrated to Leave System	Yes
Automated Notification of Conflicts for Docket Requests	Yes
Docket Notes Timestamp and User Name	Yes
Change Navigation Names	Yes
Instantly Order Your Pages and Folders	Yes
Court Creation	**CourtNotify Docket Module**
Creation of New Courts Online	Yes
Assignment of Defaults for Each Court	• Court Name • Facility • Judge's Name • Prosecutor(s) • Investigator(s) • Clerks(s)
Grouping of Courts per Agency	Yes
Selecting of a Default Court per Docket Creator	Yes
Notifications of Court Requirements	**CourtNotify Notification Module**
Assignment of Users to Dockets by Selection	Select by:

	• Name • Badge • Org • Agency • Partial Spelling • Search All
Docket Setting Options	• Not Set • Appear • Standby • Disregard
Automated Notification	• Notify All • Disregard All
Calendar Change Notification	Automated Disregard Automated Verification of User Availability
Notification Control Eliminating Redundant Notifications	Yes

Notifications of Court Requirements	CourtNotify Notification Module
Notification History per User	Request Time Notification Status Description Responsible Party Notification Date Logged By Acknowledge Due Date
Send Note with Timestamp and Note Documentation recorded in the system and via email	Yes

Acknowledge Management	CourtNotify Acknowledge Module
Escalation Standard Notice	9 Days Prior to Court Date with sequential escalations through Chain of Command
Escalation Short Notice	5 Days Prior to Court Date with sequential escalations through Chain of Command
Escalation Extreme Short Notice	3 Days Prior to Court Date with sequential escalations through Chain of Command
Personal Acknowledgement - Supervisor Acknowledge after talking to Officer on Phone or in Person	Yes
Acknowledge with Exception – Supervisor Acknowledges and Notifies Court of the Emergency that will not allow Officer to Appear	Yes
Email Acknowledgement	Yes
Email Reminders	Yes Every 3 Days until Escalations
On-Screen Acknowledge	Yes – Home Page
On-Screen Escalations – Grouped by Direct Report	Yes
Impending Items – Escalations 3 Days Before Court on Home Page Grouped by Org	Yes
Send Note with Timestamp and Note Documentation recorded in the system and via	Yes

email	
Reports	**CourtNotify**
Daily Report - Returns comprehensive report of a specified date's docket activity.	Dedicated
Docket Daily Extract - Returns a comma delimited report for download of a specified date's docket activity by Court Date.	Yes

Reports	CourtNotify
Task Query Report - Returns a target user's dockets and subordinate dockets.	Yes
Orphaned User Report - Returns a comprehensive list of users that have not been assigned to supervisors or are currently pointing to invalid supervisor records. This report is grouped by org code.	Yes
Topography Report - Returns aggregate docket data in monthly segments.	Yes
	Integrated Add On Modules
Court Tracker – Onsite Login / Logout Verification of Officer Court Time	Yes

(b)   **User Manuals**

Orion will provide an online User Guide for El Paso Texas
http://userguide.orioncom.com. This site will provide an online training manual for the system. A PDF file CNS Release 2.0.PDF will be available for download purposes. This document will include all features and functionality of the system as listed in item (1.a) of Exhibit A.

EXHIBIT B TO
ORION COMMUNICATIONS SOFTWARE LICENSE AGREEMENT

License Fee and Payment Schedule

1.   License Fee

The License Fee shall be <u>$166,500</u>

2.   Payment Schedule

(a)   Payment due upon effective date of Agreement: $41,625

(b)   Payment due upon delivery of Certificate of Installation to Customer: $83,250 and,

(c)   Payment due upon Acceptance: $41,625.

EXHIBIT C TO
ORION COMMUNICATIONS SOFTWARE LICENSE AGREEMENT

Maintenance Agreement

1. Maintenance Fee

The Maintenance Fee shall be $16,650 per year commencing and payable on or before the 1st day of the 13th month after the date of the Certificate of Installation. The first year of maintenance is provided by Licensor to Customer at no cost. The Maintenance Fee is locked in at the price indicated indefinitely, as long as Customer continues under this maintenance agreement. In the future, if Licensor desires to increase price, they will request negotiations be opened with Customer.

2. Payment Schedule

Payment is due on or before the 1st day of the 13th month after the date of the Certificate of Installation and on each annual anniversary thereafter.

SOFTWARE MAINTENANCE AGREEMENT

This Software Maintenance Agreement ("**Maintenance Agreement**") is entered into between **Licensor** and **Customer** concurrently with that certain Orion Communications Software License Agreement of even date.

1. Scope of Maintenance Agreement

During the term of this Maintenance Agreement, as set forth in Section 2, **Licensor** agrees to provide Customer standard maintenance, technical support, and education services, as set forth in Sections 3, 5, 6, and 7, for the computer programs and user manuals listed in Exhibit A to this Maintenance Agreement (collectively "**Software**").

2. Term

(a)   **Effective Date**. This Maintenance Agreement shall take effect upon the 13th month after the date of the Certificate of Installation.

(b)   **Termination Date**. This Maintenance Agreement shall terminate upon the earlier to occur of:

(i)   Customer's failure to pay the Maintenance Fee within ten (10) days of the due date, terms as per item 4.(b) Payment Terms,

(ii)   The effective date of a subsequent agreement concerning maintenance services entered into between Customer and **Licensor**; or,

        (iii)   An event listed in Section 12 below.

3.   Standard Maintenance Services

(a)   **Scope of Services**. During the term of this Maintenance Agreement, **Licensor** will provide Customer the following Standard Maintenance Services for the Software;

        (i)   Corrections of substantial defects in the Software so that the Software will operate as described in the user manuals listed in Exhibit A.

        (ii)   Periodic updates of the Software that may incorporate:

            (A)   Corrections of any substantial defects;

            (B)   Fixes of any minor bugs; and,

            (C)   Enhancements to the Software (as long as Maintenance is in effect; and,

        (iii)   Orion will provide a local contact in El Paso to provide supplemental on-site services as required by El Paso at no additional charge for the first 90 days of the installation. After the initial 90 day period, Orion will come on site at no additional cost to El Paso to address warranty or maintenance performance issues that require onsite appearances. Orion will also provide an additional 5 hours of on-site support time per month at no additional charge to El Paso. This support time will be allocated to issues that fall outside of Orion's standard maintenance and warranty services.

                Remote support requires Orion being provided a secure access to the server running the courtNotify™ system. This system can operate on a secure VPN using a public internet address utilizing Internet Authentication Services through Microsoft Server. Orion will comply with El Paso CIS security requirements to maintain secure access remote access the courtNotify™ system. The remote system access will allow Orion to submit updates, patches, and immediate trouble ticket resolutions online at agreed upon maintenance windows as approved by El Paso CIS. Orion will also provide administrative backup to the El Paso CIS department in the event of a server or service failure. Orion will work directly with the El Paso CIS organization on immediate resolution. Orion will also train one CIS technologist on the administration and maintenance of the CNS system. This individual will be given direct access to Orion's engineer assigned to support El Paso.

Direct access mean – personal cell phone number and after hour emergency contact number. This El Paso technical engineer will be given priority on any requests within the El Paso queue.

Help Desk Services

a. 800 number for support coverage
    i. Live Support personnel 8:00 am CST to 5:00 pm CST
    ii. After hour support
        1. Emergency After Hours Number
b. Email Support
    i. Submission form for help request and immediate receipt notification
    ii. Response within 24 hours of notification
c. Online Chat
    i. Live Support personnel 8:00 am CST to 5:00 pm CST
    ii. Chat Request
    iii. Live Online Chat for Resolution
d. Web Site Support
    i. Help Site for courtNotify
    ii. Maintenance of all courtNotify updates
    iii. Tools allowing users to see the support personnel screen to demonstrate actions and review steps
e. Online Trouble Ticket System
    i. Access to trouble ticket system for submission of ticket requesting and online review of status
    ii. Email notification of trouble ticket resolution and ticket web link.
    iii. Orion will acknowledge receipt of the Trouble Ticket within 24 hours of issuance.
f. Orion Trouble Resolution Response Time

SEVERITY LEVEL	DEFINITION
A Critical	• The software is in a non-responsive state, severely impacts El Paso City and County personnel productivity, citizen security/safety, and/or departmental activities. • High impact problem in which production is proceeding but impacted to the extent that production, security/safety and/or activities will be severely

SEVERITY LEVEL	DEFINITION

impacted with-in 72 hours.

Note: *Any Severity A situation should be critical enough to the customer that they will commit resources to:*

- Immediately interrupt other work and/or call in personnel in on overtime to provide additional information required by technical service personnel to resolve the problem (including, but not limited to reproducing the problem.)

- Execute the solution provided by technical service personnel with-in a half day of receipt.

Problem/Issue Closure Goal = 24 hours
Alert Notification = 2 hour increments

B

Urgent

- High-impact problem where production is proceeding, but in a significantly impaired fashion.

- Time-sensitive issue important to long-term productivity that is not causing an immediate work stoppage.

Note: *Any Severity A situation should be critical enough to the customer that they will commit resources to:*

- Begin the process required to provide additional information required by the technical service personnel to resolve the problem (including, but not limited to reproducing the problem.) within 24 hours of the technical service personnel's request.

- Apply the solution provided by technical service personnel within 1 day of receipt.

Problem/Issue Closure Goal = 72 hours
Alert Notification = 8 hour increments

C

Important

- Important issue, which does not have significant current productivity impact for the City or County of El Paso department and/or its personnel.

Problem/Issue Closure Goal = 5 business days

SEVERITY LEVEL	DEFINITION

Alert Notification = <u>24 hour increments</u>

D
Monitor
- Issue requiring no further action beyond monitoring for follow-up if required.

;

(iv)   Remote Server Access to the Server providing the application services ether by VPN, Encrypted Connection, or dedicated IP address.

(iv)   Maintenance at **Licensor**'s office of a test version, including a test database, for the most recent version of Customer's Software; and,

(b)   **Services Not Included.** Standard Maintenance Services do not include:

(i)   Charged-for-Enhancements that are offered, at **Licensor**'s sole discretion, to Customers upon payment of a license fee;

(ii)   Custom Programming Services;

(iii)   On-site support;

(iv)   Training; and,

(v)   Hardware and related supplies.

4.   Charged-For-Enhancements

Charged for enhancements are defined as system features and functionality requested by El Paso City or County that are outside the scope of the standard features offered by the CNS product line as listed in Attachment A. Upon receipt of an enhancement request, Orion will provide a written statement clearly defining why this is within the scope of the CNS product line and will be covered under the maintenance agreement or if it is out of scope and will require an enhancement rate. If an enhancement rate is required, Orion will provide a feature design document defining the new functionality, a development schedule, a test and accept schedule, and the total amount of not to exceed billable hours for the enhancement. Orion will bill El Paso at the rate of $85 per hour.

5.   Custom Programming Services

Licensor will provide Custom Programming Services to Customer, as agreed to in a written addendum to this Maintenance Agreement, signed by both parties, that specifies the Custom Programming Services to be provided by **Licensor** and the fee for the services. Custom Programming Services shall include, but are not limited to, development of custom computer programs and installation, training, and maintenance with respect to **Software**. Orion will provide these services at no charge for up to 20 hours of development on an annual basis. Subsequent development fees will be at Orion's standard programming rates for government services. This 20 hours of development is in addition to the annual maintenance hours included in this agreement.

6.   On-Site Support

Licensor, upon receipt of a written request from Customer, will provide Customer On-Site Support at a mutually agreed time. Customer agrees to pay **Licensor** all costs associated with the provision of on-site support, including charges for:

(a)   **Licensor**'s personnel;

(b)   Charges for travel, lodging and miscellaneous expenses; and,

(c)   Taxes pursuant to Section 9 below.

7.   Training

Upon receipt of a written request from Customer, **Licensor** will provide Training at a mutually agreed time at the offices of **Licensor**, unless **Licensor** agrees to conduct the Training elsewhere. Customer agrees to pay **Licensor** all costs associated with this Training, including

(a)   Charges for **Licensor**'s personnel, which may include a surcharge for training conducted at Customer's location;

(b)   Charges for travel, lodging and miscellaneous expenses; and,

(c)   Taxes pursuant to Section 9 below.

(d)   **Contractor or its insurer will INDEMNIFY, DEFEND AND HOLD the City, its officers, agents and employees, HARMLESS FOR AND AGAINST ANY AND ALL CLAIMS, CAUSES OF ACTION, LIABILITY, DAMAGES OR EXPENSE, (INCLUDING BUT NOT LIMITED TO ATTORNEY FEES AND COSTS) FOR ANY DAMAGE TO OR LOSS OF ANY PROPERTY, OR ANY ILLNESS, INJURY, PHYSICAL OR MENTAL IMPAIRMENT, LOSS OF SERVICES, OR DEATH TO ANY PERSON ARISING OUT OF CONTRACTORS ACTIONS OR FAILURES TO ACT RELATED TO THIS AGREEMENT. Without modifying the conditions of preserving, asserting or enforcing any legal liability against the City as required by the City Charter or any law, the City will promptly forward to Contractor every demand, notice, summons or other process**

received by the City in any claim or legal proceeding contemplated herein. Contractor will 1) investigate or cause the investigation of accidents or occurrences involving such injuries or damages; 2) negotiate or cause to be negotiated the claim as the Contractor may deem expedient; and 3) defend or cause to be defended on behalf of the City all suits for damages even if groundless, false or fraudulent, brought because of such injuries or damages. Contractor will pay all judgments finally establishing liability of the City in actions defended by Contractor pursuant to this section along with all attorneys' fees and costs incurred by the City including interest accruing to the date of payment by Contractor, and premiums on any appeal bonds. The City, at its election will have the right to participate in any such negotiations or legal proceedings to the extent of its interest. The City will not be responsible for any loss of or damage to the Contractor's property from any cause. [Revised 04-15-99]

8. Maintenance Fee

(a) **Warranty Period.** Licensor will not charge Customer any Maintenance Fee for the Warranty Period, as defined in Customer's Software License Agreement for the Software;

(b) **Amount of Fee.** Customer agrees to pay to **Licensor** the Maintenance Fee, in the amount set forth in Section 1 of this Maintenance Agreement, plus taxes pursuant to Section 9 below, for Standard Maintenance Services provided by **Licensor** pursuant to this Maintenance Agreement;

(c) **Discontinuance.** Customer understands that if Customer discontinues and then resumes purchase of Standard Maintenance Services, Customer will be required to pay **Licensor** the entire Maintenance Fees for the period of discontinuance, plus the Maintenance Fee for the term of Standard Maintenance Services then commencing; and,

(d) **Other Charges.** Customer agrees to pay **Licensor** for Charged-for-Enhancements, Custom Programming Services, On-Site Support, and Training in the amount and pursuant to the terms set forth in the invoice for such services.

9. Payment Terms

(a) **Due Date.** Customer agrees to pay the Maintenance Fee to **Licensor** on or before the Maintenance Fee Due Date as set forth in Sections 1 and 2 of this Maintenance Agreement. Customer agrees to pay all other amounts due **Licensor** for services under this Maintenance Agreement in accordance with the payment schedule set forth on the invoice for the services;

(b) **Payment Terms.** Payment shall be in United States currency. In the event Customer fails to pay any amount when due, Customer agrees to pay interest on the

unpaid amount at a rate equal to ten percent (10%) per annum or the highest rate allowed by law, whichever is less, plus all collection costs including attorneys' fees; and,

(c) **Taxes, if applicable.** "Taxes" means all federal, state, local and other taxes, including sales, use and property taxes, related to this Maintenance Agreement, Customer's use of the Software, or any services provided by **Licensor** to Customer related to the Software, excluding taxes based on **Licensor**'s net income.

10. Obligations of Customer

(a) **Customer Contact.** Customer shall notify **Licensor** of Customers designated Customer Contact. To the maximum extent practicable, Customer's communications with **Licensor** will be through the Customer Contact;

(b) **Installation.** Customer agrees to install all corrections of substantial defects, minor bug fixes and updates, including any enhancements, for the Software in accordance with the instructions and in order of receipt from **Licensor**;

(c) **Facility and Personnel Access.** Customer agrees to grant **Licensor** access to Customer's facilities and personnel concerned with the operation of the Software to enable **Licensor** to provide services;

(d) **No Modification of Software.** Customer agrees not to modify, enhance or otherwise alter the Software, unless and only to the extent specifically authorized in the user manuals identified in Exhibit A or the express prior written consent of **Licensor** is obtained; and,

(e) **Error Documentation.** Upon detection of any error in the Software, Customer, as requested by **Licensor**, agrees to provide **Licensor** a listing of output and any other data, including databases and backup systems that **Licensor** reasonably may request in order to reproduce operating conditions similar to those present when the error occurred.

11. Termination

(a) **Event of Termination.** **Licensor** shall have the right to terminate this Maintenance Agreement and all services provided pursuant to this Maintenance Agreement:

(i) Upon termination of Customer's Software License Agreement by either party for any reason; and,

(ii) If Customer or its employees or agents violate any provision of this Maintenance Agreement and Customer fails to cure such violation within fifteen (15) days after receipt of written notice from **Licensor**.

(iii) The City of El Paso may terminate this contract, in whole or in part, at any time by written notice to the Contractor. The Contractor will be paid its costs, including the contract close out costs, and profit on work performed up to the time of termination. The Contractor will promptly submit its termination claim to the City of El Paso to be paid the Contractor. If the Contractor has any property in its possession belonging to the City of El Paso, the Contractor will account for the same, and dispose of it in the manner the City of El Paso directs.

(iv) If the Contractor fails to comply with any provision of the contract the City of El Paso may terminate this contract for default. Termination shall be effected by serving a notice of intent to terminate the contract setting forth the manner in which the Contractor is in default. The contractor will be given an opportunity to correct the problem within a reasonable time before termination notice is rendered. The contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

12.   Ownership

Customer acknowledges that **Licensor** owns all proprietary rights, including patent, copyright, trade secret and other proprietary rights, in and to the Software and any corrections, bug fixes, enhancements, updates or other modifications, including custom modifications, to the Software.

13.   General Provisions

(a)   **Notices**. All notices under this Maintenance Agreement are to be sent by registered mail to the address below or to any other address as the party may designate:

LICENSOR:

Orion Communications, Inc.
7142 Shook Avenue
Dallas, Texas 75214
Attn: Leslie DeLatte

CUSTOMER:

Mayor
City of El Paso, Texas
2 Civic Center Plaza
El Paso, TX 79901

(b)   **Assignment**. Customer and Licensor will not assign or sublicense, in whole or in part, any of its rights or obligations under this Maintenance Agreement

without the prior written consent of **Licensor**, which consent shall not be unreasonably withheld;

        (c)   **Complete Maintenance Agreement; Amendment**. This Maintenance Agreement and Exhibit A set forth the entire understanding of the parties with respect to the subject matter of this Maintenance Agreement. Any amendment to this Maintenance Agreement must be in writing and signed by both parties;

        (d)   **Waiver**. The waiver or failure of **Licensor** to exercise in any respect any right provided for in this Maintenance Agreement shall not be deemed a waiver of any further right under this Maintenance Agreement;

        (e)   **Severability**. If any provision of this Maintenance Agreement is invalid, illegal or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted. The remainder of the Maintenance Agreement shall be valid and enforceable to the maximum extent possible;

        (f)   **Governing Law**. This Maintenance Agreement is to be construed in accordance with the law of the State of Texas and,

        (g)   **Mediation**.

The parties agree to submit disputes between them to non-binding mediation prior to seeking relief through formal legal action. Both parties shall agree to the mediator.

AGREED:

LICENSOR:

Orion Communications, Inc.

By; _____
Signature

Leslie DeLatte
Name

President
Title

7142 Shook Avenue
Dallas, Texas 75214
Address

_____2/13/04_____
Date

Passed and approved this 6th day of July, 2004.

CUSTOMER:

_____City of El Paso_____

By:_____
Name: Joe Wardy_____
Title: Mayor_____

Address:

2 Civic Center Plaza_____
El Paso, TX 79901_____

_____

Date:_____

ATTEST:

_____
Richarda D. Momsen
City Clerk

APPROVED AS TO FORM:

_____
Ruth Reyes
Assistant City Attorney

APPROVED AS TO CONTENT:

_____
Chief Richard Wiles
El Paso Police Department

_____
Tony Montoya, Director
Information Technology